

Remarks/Arguments

Status of Claims

Claims 1-20 were originally filed in the application. Claims 1-10 have been canceled. Claims 11-20 stand rejected under various rejections. No Claims have been amended; no Claims have been canceled; and no new Claims have been added. Therefore, Claims 11-20 are pending in this application.

Claim Rejection – 35 USC § 103

Claims 11-20 stand rejected under 35 USC 103(a) as being unpatentable over United States Patent publication 2002/0016534 to Trepagnier (“Trepagnier”) in view of United States patent number 4,894,547 to Leffell (“Leffell”). Applicants respectfully traverse this rejection.

The Examiner states that Trepagnier teaches “a method of determining the effect of a treatment to the skin of a subject.” This method includes exciting within the claimed wavelengths, measuring fluorescence within the claimed wavelengths, calculating relative peak ratios, and comparing the ratios to standards or surrounding skin, but does not disclose the particulars of how to perform the method for measuring treatment related change. The Examiner then relies on Leffell, claiming that the reference teaches monitoring skin for improvements over time.

As a preliminary matter, Applicants respectfully point out that Trepagnier relates to measuring blood glucose levels, especially for monitoring a health condition, such as diabetes. It does not specifically teach a method of determining the “effect of a treatment to the skin” of a patient or subject.

Thus, Trepagnier purports to teach that measurements can be taken for tryptophan, collagen, or other species to capture transient changes that relate to blood glucose levels. While combinations of wavelengths and various species may be measured, in no way does the reference teach or suggest the specific multiple wavelength measurements, generation of ratios, or comparison of ratios for treated

versus untreated skin of the present invention. While the Examiner points to various paragraphs in the reference, Applicants fail to see where these steps are specifically taught or suggested. Applicants respectfully submit that the Examiner is being overly broad in interpreting "calculating relative peak ratios". The reference certainly does not teach what peaks are to be compared to generate the ratios. Regardless, the reference could not be any clearer that the method is for measuring blood glucose or analyte levels.

Trepagnier teaches measurements for demonstrating effects from ultraviolet light exposure. The term "treatment" in the present invention relates to application of compositions that contain, for example (and as demonstrated in the example of the specification), retinol to reduce or eliminate wrinkles. Nowhere in the reference does Trepagnier define a treatment as a skin care composition containing active ingredients for wrinkle reduction. Furthermore, Applicants have canceled the effects of skin pigmentation and are assessing fluorescence and associated tryptophan levels, which are associated with cell proliferation and therefore relate to the health of the skin. Contrary to this approach, Leffell creates a ratio that cancels the effects of fluorescence to show pigmentation. Leffell also does not teach or suggest the specific multiple wavelength measurements, generation of ratios, or comparison of ratios for treated versus untreated skin of the present invention. Therefore, the combination of references does not render the present invention obvious. Applicants therefore respectfully request withdrawal of the rejections and passage of the claims to allowance.

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. Applicants look forward to an early notice of allowance for this application.

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